



**Ontario Municipal Board**  
Commission des affaires municipales  
de l'Ontario



**ISSUE DATE:** May 30, 2016

**CASE NO(S):** PL150564

**PROCEEDING COMMENCED UNDER** subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Big Rideau Lake Association
Applicant:	Richard Earle
Subject:	Minor Variance
Variance from By-law No.:	2005-6
Property Address/Description:	Pt. Lot 21, Conc. 2, Twp. Of Burgess
Municipality:	Township of Rideau Lakes
Municipal File No.:	A-8-2015
OMB Case No.:	PL150564
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OMB Case Name:	Big Rideau Lake Association v. Rideau Lakes (Township)

**Heard:** April 28, 2016 in Delta, Ontario

**APPEARANCES:**

<b><u>Parties</u></b>	<b><u>Counsel*/Representative</u></b>
Richard Earle	Self-represented
Township of Rideau Lakes	A. E. Fleming*
Big Rideau Lake Association Inc.	P. D. Rasmussen*

**DECISION OF THE BOARD DELIVERED BY M. C. DENHEZ AND ORDER OF THE BOARD**

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**1. INTRODUCTION**

[1] This was a variance dispute about a proposed development on an undersized lot facing Big Rideau Lake ("the lake"), in the Township of Rideau Lakes ("the Township"). The core issue was the extent of preliminary study required.

[2] Richard Earle ("the applicant") owns two adjoining lots facing the lake. The first (larger) lot was purchased in 2008. The second ("the subject property"), was purchased in 2013. The latter lot of record had an old boathouse, but was otherwise vacant.

[3] At all relevant points, that property is less than 30 metres ("m") from the water. The applicant proposed building a seasonal dwelling, specifically for the subject property (there was no question of treating the two lots as a unit). It would require three variances to the Township's Zoning By-law No. 2005-6 (the "Zoning By-law"):

- To allow an eight-metre water setback for the dwelling, whereas the Zoning By-law called for at least 30 m.
- To allow the septic system to have a 15 m water setback, whereas the By-law called for at least 30 m.

- To permit a one-metre rear setback, whereas the By-law called for at least 7.5 m.

[4] The applicant acknowledged that the 30 m water setback would normally preclude residential development; but he and the Township said the Official Plan ("OP") made an exception for undersized lots of record. Municipal planning staff was supportive, subject to conditions, notably a tertiary sewage treatment unit. The Committee of Adjustment ("COA") agreed, and authorized the variances, subject to 12 conditions.

[5] The Big Rideau Lake Association ("the Association"), an incorporated body of owners on the lake, appealed the COA decision to the Ontario Municipal Board ("the Board").

[6] The Board hearing was in two parts. The case could not finish at its originally-scheduled time, so it was continued – five months later. That changed the debate.

[7] The Township's initial position had been that its OP did not require elaborate environmental assessment, and that its environmental requirements had been met. By five months later, the applicant had obtained a more detailed assessment anyway, making the initial argument moot; but the debate continued on other grounds.

[8] The Association was represented by one of its members, retired lawyer P. D. Rasmussen, with the support of another member, retired planner Peter Hannah. Its position was supplemented by environmental planner Martha Bradburn, of the Rideau Valley Conservation Authority ("RVCA"), who testified under summons.

[9] The Township defended the COA's decision, with the support of the Township's planner and Manager of Development Services, Brittany Mulhern. The applicant's position was supported by planner Tracy Zander and environmental consultant Reginald Genge.

[10] The Board has carefully considered all the evidence, as well as the submissions of both sides. The Board finds that the Association's concerns are understandable, but manageable. In particular, although the Board agrees with most of the Association's methodological observations, it finds that these can and should be addressed via (a) modified and supplementary conditions to the variances, and (b) the Site Plan Control process. In short, the Board authorizes the variances, subject to a substantially revised roadmap. The details and reasons are set out below.

## **2. GEOGRAPHIC CONTEXT**

[11] Big Rideau Lake is part of the Rideau waterway, a UNESCO World Heritage Site.

[12] The subject property faces the lake to the north. The Board was told that the property measured some 10,450 square feet, or about a quarter of an acre. However, it is unusually shaped, with a lakefront portion, plus an inland extension to the southwest, which the parties called "the panhandle". That inland extension was separated from the water by a smaller property to the west, belonging to someone else.

[13] The subject property is subject to Site Plan Control.

[14] The property has a significant slope. Indeed, at the back (south) side of the property, this treed slope gets steeper on the land of another abutting neighbour. The experts agreed that, because of this topography and vegetation, this neighbour was unlikely to develop anywhere on this slope – or even within sight of the subject property. The parties further agreed that the requested rear setback variance, for a setback of one metre, was non-contentious.

[15] The two water setbacks (for the building and septic system) were a different matter. The boathouse, perhaps 60-70 years old, had an excavated boatslip, about 10 feet long, dredged out of the shoreline. A previous owner, a Mr. Lossing, had used the property specifically for access to the lake, and for no other apparent purpose, except boat storage and accessory parking.

[16] The proposal was for a small seasonal dwelling, of about 850 square feet. The Township's planner said the project complied with the By-law provisions for Floor Space Index and lot coverage.

[17] Positions evolved during the five-month hiatus. The original proposal was for the dwelling to have a water setback of 8 m, and for the septic holding tank to have a water setback of 15 m. Those were the minimum distances authorized by the COA, subject to the conditions including the tertiary system.

[18] However, by the time the hearing reconvened five months later, the Township revised those figures:

- The proposed dwelling setback was now increased to 12.8 m.
- The conventional septic system (with holding tank) would be replaced by a tertiary system, whose minimum proposed water setback was revised from 15 m to 18 m (it would later change back to 15 m, as described below).

[19] After some debate, there was ultimately no dispute among the experts that the methodology of measurement deserved particular attention:

- Setbacks could not be computed by simply running a tape measure along the surface topography, because the latter was both sloped and bumpy. It was finally agreed that setbacks should be measured in a straight line, on a horizontal plane. In the words of Mr. Rasmussen, they should be measured at the base of the right-angled triangle, not the hypotenuse. This was the normal method; the Zoning By-law specified, for example, that water setback was calculated as "the horizontal distance between the high water mark in the nearest building line". The applicant's planner was compelled to agree; so did the Township.

- Water setbacks needed to be measured from the water. This would notably include the dredged boatslip, which might have been overlooked in previous calculations.

[20] Pursuant to agreement by the experts on the above methodology, the Township reverted to a figure of 15 m, as the minimum water setback for the septic system, as previously authorized by the COA. The Township added that this minimum of 15 m also corresponded to the minimum specified in the *Ontario Building Code* ("OBC").

[21] The COA's Condition No. 12 had also observed that the Zoning By-law imposed a calculation of minimum building size – in this case, of 807 square feet. With the concurrence of their experts, the parties agreed that this minimum building requirement was superfluous in this instance. They further agreed on a supplementary variance to waive this requirement.

[22] On consideration of this additional request to waive minimum building size, the Board found the above amendment to the original variance application to be minor. Under s. 45(18.1.1) of the *Planning Act* ("the Act"), it did not require recirculation, and the Board would consider the application as so amended.

[23] As for the proposed modification in the water setback for the dwelling, to increase the minimum setback from 8 m to 12.8 m, the Board again found the above amendment to be minor, under s. 45(18.1.1), not requiring recirculation, and the Board would consider the application as so amended.

### **3. APPLICABLE CRITERIA**

[24] For variances, the criteria (often called "the four tests") are set out at s. 45(1) of the Act, namely that a variance from the applicable by-law may be authorized if it is minor, desirable for the appropriate development or use of the property, and maintains the general intent and purpose of both the Zoning By-law and of the OP.

[25] Parenthetically, even if the rear setback variance of 1 m was non-contentious, as was the proposed waiver of minimum building size, the Board has a residual responsibility to verify that those two proposed variances meet the four tests. On review of the supportive and undisputed expert evidence, the Board is satisfied that they do.

[26] Section 3(5) of the Act also requires decisions to “be consistent with” the Provincial Policy Statement 2014 (“PPS”). The latter defines UNESCO World Heritage Sites as “significant” heritage resources which are subject to the following Provincial policies:

- 2.6.1 Significant built heritage resources and significant cultural heritage landscapes shall be conserved.
- 2.6.3 Planning authorities shall not permit development and site alteration on adjacent lands to protected heritage property except where the proposed development and site alteration has been evaluated and it has been demonstrated that the heritage attributes of the protected heritage property will be conserved.

[27] Finally, the Board’s statutory authority in this regard is not confined to authorizing or denying the requested variances. Under s. 45(9) of the Act, the COA could stipulate that its variance authorization was “subject to such terms and conditions as the Committee considers advisable”. Under s. 45(18), the Board has the same authority to stipulate such conditions as it considers advisable.

## **4. ANALYSIS**

### **4.1 Introduction**

[28] As mentioned, the position of the Township changed during the five-month hiatus, largely in response to the additional analysis conducted by the applicant’s environmental expert. In practice, much of the Township’s original argument, downplaying the requirements for this research, thereby became moot.



[29] The Township had emphasized that there were over a hundred similar undersized properties along this stretch of the World Heritage Site. The Board concludes that the current debate is bound to be repeated. The Board would be remiss in not warning that the Township's initial interpretation of the OP's relevant provisions was unreliable. It did not represent a viable roadmap for the future. First, however, the Board will revisit this OP, which covers a number of factors in detail.

#### 4.2 The Existing OP Framework

[30] The Board will focus on three overall "objectives" of the OP, pertaining to water quality, heritage, and vistas. Near the opening of the OP, at Policy 1.3.2, there is an extensive description of the "Basis of the Plan", recognizing the Township's built and natural elements:

The Township possesses approximately 500 kilometres of shoreline, excluding the Rideau Waterway... The pleasure boating that took root and spread along the Waterway over its history created a recreational paradise for thousands of property owners and visitors to Rideau Lakes. In recognition of its historic and recreational value the Rideau Waterway has been designated as a Canadian Heritage River, thus further elevating its natural significance...

The most significant natural feature of the Township is its water bodies. These are a resource of paramount value for recreational and tourism purposes and must be protected from environmental degradation...

[31] This "basis" leads to OP "objectives", notably the following at OP Policy 1.3.3:

- |          |  |
|----------|--|
| 1.3.3.3  | To preserve and enhance water bodies and their environs by encouraging development and redevelopment which is environmentally-sensitive and which maintains or improves water quality and the shoreline environment. |
| 1.3.3.9  | To conserve and protect cultural heritage resources...   |
| 1.3.3.10 | To have particular regard to the Rideau Canal Corridor and all its component parts - its scenic elements, its historic value - all its built and natural attributes.   |
| 1.3.3.11 | To enhance the aesthetic qualities of the built and natural environment.   |

[32] Indeed, OP Policy 2.2.3.2.1 refers to a "30-metre minimum water setback":

Development or site alteration such as filling, grading and excavating shall occur a minimum distance of 30 metres from the normal high water mark of any water body.

[33] After referring to “environmentally-sensitive development” which “fits” the immediate “natural, scenic and historic character”, the OP adds that, within the above 30-metre setback, there will be a waterfront “15-metre strip of substantially undisturbed and naturally-vegetated area” :

- 2.6.1 ...It shall be a policy of this Plan that development be undertaken in a manner which is sympathetic and complementary to the natural and built contextual environment in which it is to occur. Development shall, to the extent possible, be designed so as to maintain, fit into and take advantage of the natural, scenic and historic character of individual sites and their environs. Some of the strategies to achieve this objective in the context of site planning, lot design, road layout and construction include:
- 2.6.1.3 Maintaining a minimum 15-metre strip of substantially undisturbed and naturally-vegetated area abutting the length of the shoreline on waterfront properties, subject to limited allowance for water-related structures such as docks, pump houses and boathouses. This strip will contribute to protecting the riparian and littoral zones and their associated habitat, prevent erosion, siltation and nutrient migration, and assist in maintaining the natural appearance of the shoreline area. The strip will form part of the 30-metre minimum water setback required pursuant to the Waterfront Development Policies section of this Plan and is intended to ensure the protection of the most environmentally-sensitive portion of the setback area...

[34] However, there are exceptions to the 30-metre water setback, notably in the case of Environmental Impact ("EI") Assessments. For example, OP policy 2.2.3.2.3 says that a lot of record can indeed be under 30 m, and still be buildable, *if* it complies with the OP chapters on fish habitat and EI Assessments:

Development or site alteration may be permitted less than 30 m from the water body in situations where existing lots... preclude the reasonable possibility of achieving the (30 m) setback... Any proposal for development or site alteration proposed to occur less than 30 m from the water body shall be subject to the policies of the **Fish Habitat and Adjacent Lands** and **Environmental Impact Assessments** sections of this Plan. [Emphasis in original]

[35] OP Policy 2.21.7 elaborates on both the role and contents of these EI Assessments:

2.21.7.1 Potential negative impacts on the identified natural heritage feature or area will be examined through a process of environmental impact assessment, conducted on a case-by-case basis, prior to the approval of development...

2.21.7.3 An environmental impact study shall:

- 1) Define the nature and the boundaries of any significant features, ecological functions, and values on, or adjacent to the site.
- 2) Describe and map the proposed development activities, including building location, excavation, site grading, landscaping, drainage works, roadway construction, paving, sewage and water servicing in relation to the various environmental considerations.
- 3) Predict the effects of the proposed development on the various components of the environment on and adjacent to the site, such as wildlife, fish, vegetation, soil, surface water, ground water, air and any other relevant factors, taking into consideration effects during and after site alteration.
- 4) Evaluate the significance of all predicted negative and positive effects on the various environmental considerations.
- 5) Itemize and recommend all measures that can be taken to reduce or mitigate the predicted negative impacts.
- 6) Evaluate the cumulative effect that the project (and any other known projects or activities) may have following implementation of any mitigation measures on the natural features and ecological functions identified for protection.
- 7) Conclude with a professional opinion on whether negative effects on the natural features and ecological functions will occur, the significance of such impacts, and whether ongoing monitoring is required.

2.21.7.4 The approval authority may use various planning controls such as site-specific zoning provisions or site plan control to ensure that development and site alterations occur in accordance with the environmental impact study recommendations.

[36] As specific as the above policy may appear, however, this same OP Policy 2.21.7 offers the alternative of a shortcut, called an "environmental screening checklist", which may be used "in certain cases" (without clearly defining what those cases are):

- 2.21.7.1 (Contd.)...In certain cases, the requirements for an environmental impact assessment may be satisfied through the completion of an environmental screening checklist submitted to the approval authority as part of a planning application. The purpose of the checklist will be to provide a screening of the likelihood of negative impacts.
- 2.21.7.2 Subsequent to the review of the checklist by the approval authority, an environmental impact study, prepared by a qualified individual, may be required in order to assess the potential negative impacts on the natural features and ecological functions of the area in question. Such environmental impact study shall be required prior to the consideration of the planning application by the approval authority.

[37] Next, as for the other OP "objectives" pertaining to heritage and vistas, the OP acknowledges the "historical" development of cottage country, in a "linear" fashion along the waterway, and the "integration of buildings and structures into those landscapes". OP Policy 2.2 addresses "waterfront development" among those "spectacular vistas":

- 2.2.1 Historically, the areas of the Township which abut or are adjacent to the Rideau Waterway and the Township's many lakes and rivers have attracted tremendous interest as summer recreational areas. Over the years, low density seasonal dwellings evolved in a linear fashion as waterfront areas were discovered by residents of nearby towns and various communities much farther away... This is hardly surprising, given the beautiful shoreline areas of Rideau Lakes with their fabulous aesthetic appeal and superb leisure and recreational opportunities...
- 2.2.2 While the character of specific waterfront areas varies, some of the key elements of this character are:
  - The unique and limited land use mix, overall low density of development and distinct form and massing of buildings;
  - The presence of spectacular vistas and alluring natural landscapes, and the integration of buildings and structures into those landscapes with minimal disturbance...

[38] Finally, it was undisputed that this project would be subject to Site Plan Control. At policy 5.4, the OP provides further detail on the requirements:

- 5.4.2 It is the intention of the Township to use Site Plan Control as a planning tool complementary to the Zoning By-law to ensure that...
- 2) Design details, such as accessory buildings and structures, lighting, walkways..., grading, drainage, landscaping materials, fencing, etc., are adequate for the uses proposed, in terms of functional, safety and aesthetic considerations;
  - 3) Development occurs with minimal impact on natural and cultural heritage resources, particularly where proposed in immediate proximity to water bodies...

#### **4.3 The Township's Initial Argument: Requirements Had Been Met**

[39] During the first part of the hearing, the Township said the question before the Board was whether to allow development on this a lot of record – with variances accordingly – or whether to "sterilize" the lot. In the Board's view, the key question pertaining to the intent of the OP was this: what was the amount of due diligence that was expected, in deciding whether this non-conforming waterfront property was buildable.

[40] The Township's planner said the proposal was "the best possible situation for the property." "Sterilization", she said, would not only be undesirable for this property: it would set a problematic precedent for the Township, because there were over a hundred properties on the lake with under 30 m of space.

[41] The Association disputed the sterilization argument. It said that many of those smaller properties – including one immediately west of the subject property – had been manifestly intended solely as boat launches, and that it was absurd to assume that every lot of record had been intended for residential development.

[42] Whatever the merits of those arguments, they failed to address whether the proper due diligence had been invested in the current proposal, notably the impacts on

water quality, as described in the OP. The Township's planner countered, however, that the subject property was *not covered* by the cited environmental provisions of OP policy 2.21.7.1 – and that even if it were, those requirements had been satisfied anyway. Those arguments are addressed in turn.

[43] First, she said this lot was not covered by those OP environmental requirements, because this lot had no "identified natural heritage features." She reached that conclusion because the lot was not *designated* as a "natural heritage feature" on the OP map. For that matter, she added, it had no wetland, or significant woodland.

[44] The Board was not persuaded. OP Policies like 2.21.7.1 do not confine those ecological requirements to "*designated*" features; the OP applies them to "*identified*" natural features. The question is therefore whether the OP had "identified" this lakefront accordingly.

[45] The answer is clear. At policy 1.3.2, not only does the OP itself label the lake a "significant natural feature"; in describing the "basis of the plan", it calls it (and similar water bodies) the Township's *most* significant natural features:

The most significant natural feature of the Township is its water bodies.  
These are a resource of paramount value...

[46] For good measure, the OP adds, in the same section:

The Rideau Waterway has been designated as a Canadian Heritage River, thus further elevating its natural significance.

[47] With such overt OP language, specifically labeling the lakefront as a "natural feature" of "paramount" importance, the Board was not persuaded that the lakefront had failed to be "identified" as a natural heritage feature, e.g. for purposes of OP Policy 2.21.7.1.

[48] The Township's planner went on however, to argue that, *even if* the lakefront were a natural heritage feature, the Township had already met the procedural

requirements of OP policy 2.21.7.1 anyway. Though there had been no EI assessment, there had been the alternative of an "environmental screening checklist", thereby satisfying that OP requirement.

[49] On closer examination, however, there were three problems with that argument.

[50] First, the OP defined this checklist as a "checklist submitted to the approval authority as part of a planning application." No such checklist was submitted *to* the Township with the application. Indeed, according to the Township's planner, the Township presumed that the "checklist" was not something to be submitted *to it with the application*, but rather something the Township would create and complete itself.

[51] Next, no Township document explained what the checklist even was, let alone what its contents were.

[52] Finally, though the word "checklist" usually brings to mind a significant list of questions to be answered that was not what the Township did here. In practice, the Township's planner said that, unless the site was already *designated* as a natural heritage feature on the OP map, the "checklist" comprised only two questions: was there a significant wetland, and/or a significant woodland? If those two answers were negative, she said the matter was then at an end, and no further environmental requirements existed, at least under this interpretation of the OP.

[53] The Board was unconvinced that the checklist, such as it was in this case, constituted anything similar to the kind of due diligence anticipated in the OP.

[54] That does not mean the Board was unsympathetic to the Township's position, and that of its planning staff. The amount of shoreline in this Township is prodigious. If the Township were to treat every centimetre of its shoreline as a prospect for an encyclopaedic EI assessment, then the consequences – just to review the resulting paperwork – could be unnecessarily onerous for both the Township and its ratepayers.

[55] The solution, however, is not to sidestep the OP with contrived shortcuts. If the Township perceives the current OP methodology as unwieldy, then it should consider drafting an Official Plan Amendment which provides more workable language, so as to focus on situations which involve *bona fide* environmental concerns, and to provide more expeditious analysis for situations which clearly do not. The Township might even consider using that opportunity to further clarify its OP position on those numerous undersized lots, before being confronted with more litigation like the current case. However, the Board leaves those questions for the Township to decide.

#### **4.4 The Subsequent Township Position, in Light of Further Assessment**

[56] As it turns out, the applicant used the five-month hiatus to commission Mr. Genge's professional study of prospective water quality.

[57] Big Rideau Lake has been extensively studied for decades. Mr. Genge reviewed data going back over 40 years, based on the lake's dilution capacity, its flushing capacity, and its lake morphology. He concluded that the project, particularly with its tertiary treatment system, represented no threat of any visible net decline in water quality. "I can't come to any other conclusion." He attached his own series of recommended conditions. The Township concluded that "the EI Assessment has been done."

[58] Ms. Bradburn of the RVCA did not dispute Mr. Genge's findings. Mr. Hannah, for the Association, agreed that Mr. Genge "has addressed the fish habitat issue"; he also agreed that there was no likely impact on water quality. The Board finds no evidence to the contrary.

#### **4.5 Other Overt Considerations**

[59] Mr. Rasmussen argued that, although Mr. Genge's report had disposed of the question of water quality for trout, "it doesn't deal with any of the other matters". Mr. Hannah added that "the onus is on the applicant to provide a lot more information."



[60] For example, PPS Policy 2.6.3 explicitly called for an "evaluation" that heritage attributes would be "conserved". Mr. Hannah also pointed to the OP emphasis on vistas, and the resulting inference that those too deserved attention and consideration. Similarly, under OP policy 2.21.7.2, an EI Assessment would normally address supplementary matters other than water quality, notably a proper "map" of:

- building location
- grading
- drainage
- landscaping

[61] Mr. Rasmussen asked the applicant's planner to confirm that this was more information than appeared in Mr. Genge's report. She agreed.

[62] So does the Board. However, although there was clear OP direction that applicants and officials must give visible and credible consideration to those other factors, the question is the venue.

[63] As alluded to, it is not uncommon, in variance matters, to attach conditions stipulating that all prerequisites must be met. In this instance, however, the Board is mindful that the OP goes on to repeat that most of those same factors are addressed in the Site Plan stage. Indeed, OP policy 5.4.2. targeted those factors for the Site Plan process, notably:

- design
- grading
- drainage
- landscaping
- "impact on natural and cultural heritage resources"

[64] The Board will not presume that the OP intended this process to be uselessly duplicative or repetitive.

[65] The Township argued that it had every intention of addressing those matters in full, during the Site Plan process. That is not to suggest that the informational

requirements would be any less rigorous; that would be contrary to the plain intent of the OP, which attaches manifest weight to this information. Since bad faith is not presumed, the Board has no ground to doubt the sincerity of the Township in that regard.

[66] For that reason, the Board considers it unnecessary to incorporate a plethora of supplementary conditions to the variances, pertaining to information which is already anticipated to be fully included and considered in the Site Plan process. The Board has every expectation that the Township would abide by that commitment.

[67] The same applies to vistas. Although there was once a school of thought which supposed that aesthetics had no role in the Ontario planning system, that assumption has been put aside – particularly when an OP makes such considerations obligatory. Again, however, the Board considers it unnecessary to belabour that point, on the premise that the Board fully expects that the Township would want to pursue that issue in its Site Plan process anyway.

#### **4.5 The 15-Metre Vegetated Setback**

[68] As mentioned, OP Policy 2.6.1.3 says that, as “part of the 30-metre minimum water setback”, one should maintain “a minimum 15-metre strip of substantially undisturbed and naturally-vegetated area abutting the length of the shoreline”. This variance proposal, however, suggested a water setback of neither 30 m nor 15 m, but 12.8 m.

[69] The Township argued that the Board could discount a literal application of the OP’s reference to a 15 m strip, so long as it maintained the intent of the OP. Indeed, the Township argued that the OP could not possibly intend a 15 m vegetated buffer; if it did, it would have been impossible e.g. to build a deck there – whereas the Zoning By-law (which was presumed to comply with the OP) clearly permitted same. By that interpretation, the OP’s explicit 15 m strip need not really be 15 m.

[70] Despite the eloquence of the argument, the Board was unconvinced. Granted, the OP starts with an explicit setback of 30 m, but then allows exceptions for smaller lots of record; but that is because the OP says so specifically. The OP specifies no similar overt exception for the 15 m strip.

[71] The Board remains mindful that the Zoning By-law does allow decks to encroach on this strip; but that is not conclusive. Across Ontario, it is not uncommon for planning documents to assimilate decks and patios to "hard" and "soft" landscaping, thus permitting them in areas otherwise reserved for landscaping. The wall of a dwelling is a different matter.

[72] In short, although the Board was persuaded that the intent of the OP could still be maintained with a water setback of 15 m, it found no similar authority at 12.8 m.

[73] Given the resulting necessity of reorganizing the proposed lot layout, the Board is dispensing with the COA's first condition, about following the specifications in the application.

[74] Finally, the above application of the 15 m strip is not to suggest that a new building must be invisible. The OP calls for aesthetics and good design; it does not posit that the visual character of the Waterway is a wilderness. On the contrary, the OP clearly recognizes that this Waterway's character is interwoven with its longstanding role as cottage country.

## **5. ORDER**

[75] The Board disposes of this matter as follows:

1. The Board orders that the following variances to Zoning By-law 2005-6 of the Township of Rideau Lakes are hereby authorized:
  - a) to allow the dwelling to have a 15 metre water setback

- b) to allow the septic system to have a 15 metre water setback
- c) to permit a one-metre rear setback
- d) to waive the requirement (807 square feet) for minimum building size

2. The above variances are subject to the following conditions:

- a) That a Waterloo Biofilter sewage disposal system be installed, or tertiary equivalent, including phosphorus treatment, the whole in accordance with the Ontario Building Code. Should the applicant choose to install a Waterloo Biofilter Area Bed System, the applicant will be required to adhere to all requirements subject to the CEMC (99-08-236) approval, including but not limited to, the maintenance program.
- b) That notwithstanding the water setback authorized above, the Owner shall construct the system at no less than 15 m from the water, plus such additional space as far back from the water as possible, while complying with the Ontario Building Code.
- c) That the existing buffer of natural vegetation be maintained between the structure and the rear lot line.
- d) That existing vegetation within the 30 m setback shall be maintained, except for that disturbed by the proposed development. The Owner shall develop a shoreline naturalization buffer (no disturbance area) extending 15 m back from the high water mark. A moderate shoreline access path through this area is permitted.
- e) That the shoreline naturalization buffer shall be planted with native species in accordance with an approved landscape plan. The Owner shall prepare and submit to the Township a landscape plan, illustrating the re-

vegetation of the naturalization buffer that shall be created within the first 15 m of the shoreline, and the landscape plan shall be incorporated into the Site Plan approval.

- f) That stormwater runoff be captured and directed away from the lake to an area of infiltration.
- g) That the Owner shall submit to the Township a grading and drainage plan prepared by a Professional Engineer, and a site plan drawing illustrating the dwelling location and septic system location, with setback distances to the shoreline to the satisfaction of the Township, all of which shall be incorporated into the Site Plan approval.
- h) That all outdoor lighting be downward cast, and as minimal as required to meet the required objectives.
- i) That all materials used on the exterior of the structure be of a natural material or a colour reflective of the surrounding environment.
- j) That sediment and erosion control measures be implemented during all stages of construction. This must include some form of silt fencing between the areas of development and the lake. This fencing must remain in place until all areas that were disrupted are fully stabilized (i.e. no bare soils remain).
- k) That all excavated material is to be disposed of away from the lake, and all construction material shall be stored in a location well away from the lake.
- l) That future development not included in this application will be subject to review and approval by the Township, RVCA and/or Parks Canada and any other governing agency or regulations where applicable

- m) That the Site Plan Agreement, Site Plan, Landscaping Plan and Site Grading and Drainage Plan shall be registered on title.
- n) That immediately after installation of the septic field, the septic field shall be covered with sod to avoid any erosion of topsoil into the lake in the event of a heavy rainfall episode.
- o) That any excavation materials during the construction stage shall not be stored on-site but shall be removed at the time of excavation.
- p) That access to the water should be in close proximity to the existing boatslip.

*"M. C. Denhez"*

M. C. DENHEZ  
MEMBER

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**Ontario Municipal Board**

A constituent tribunal of Environment and Land Tribunals Ontario

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